



STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant
Attorney General

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Opinion No. 94-158

July 11, 1994

The Honorable Bill Strait
Prosecuting Attorney
Fifteenth Judicial Circuit
P. O. Box 686
Dardanelle, AR 72834

Dear Mr. Strait:

This is in response to Deputy Prosecuting Attorney Bart F. Virden's request for an opinion on the following question:

If a person obtains an application for an absentee ballot of a preferential primary, are they automatically entitled to [an absentee ballot] in a run-off or do they need to complete a second application in the event that there is a run-off?

I assume, as an initial matter, that your question pertains to those who vote absentee other than in person as authorized under A.C.A. § 7-5-402(3) (Repl. 1993).¹ With regard to those instances where application is required, a review of the relevant Code sections reflects legislative intent for an application to apply to

¹ It was recently concluded, in Attorney General Opinion 94-133 (copy enclosed), that an application for absentee ballot is not required for one who is voting absentee without an excuse within the time frame in A.C.A. § 7-5-411(a)(1), as authorized in Act 593 of 1993 (A.C.A. § 7-5-402(3) (Repl. 1993)).

more than one election. Arkansas Code Annotated § 7-5-405 (Repl. 1993), which governs the application form, provides under subsection (1) for the voter's excuse as follows:

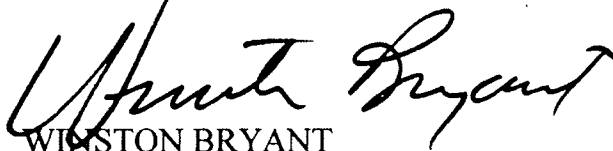
Because of, I will be absent from my voting precinct on the date of the election(s) to be held on, 19. . . ; therefore I am requesting that you provide me with the appropriate absentee ballot(s). [Emphasis added.]

Section 7-5-409 (Repl. 1993) governs the materials to be furnished to qualified voters, and states under subsection (b)(1) that if the applicant is eligible to vote absentee, the county clerk shall deliver or mail "[a]n official ballot for each election named in the application...." [Emphasis added.]

It thus seems clear that one application may suffice. With regard to your specific question, however, it is up to the clerk to determine whether the applicant is in fact eligible to vote absentee in the run-off. The statutes appear to contemplate making this determination from the application. It is therefore probably not accurate to say that an applicant is "automatically entitled" to an absentee ballot in the run-off merely by virtue of submitting an application for the preferential primary. Rather, it must be determined as a factual matter whether the application applies to the run-off. If so, and eligibility is shown, a second application is not necessary.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,

A handwritten signature in cursive script, appearing to read "Winston Bryant", written in dark ink.

WINSTON BRYANT
Attorney General

WB:EAW/cyh

cc: The Honorable Bart F. Virden, Dep. Pros. Att'y